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COMMITTEE ON URBAN AFFAIRS
January 17, 2006
LB 850, 907

The Committee on Urban Affairs met at 1:30 p.m. on Tuesday, January 17, 2006, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 850 and LB 907. Senators present: Mike Friend, Chairperson; Matt Connealy, Vice Chairperson; Jeanne Combs; Abbie Cornett; Ray Janssen; David Landis; and DiAnna Schimek. Senators absent: None.

SENATOR FRIEND: Good afternoon, everybody. My name is Mike Friend, and I'm from northwest Omaha, and this is the Urban Affairs Committee. So if you're looking for excitement and fun, then you're in the wrong room. (Laughter) I want to introduce the committee. We'll have some folks straggling in, I'm sure, but the committee that's here at the moment: Senator DiAnna Schimek from Lincoln; and to her right, Beth Dinneen, the committee clerk; to my right, Bill Stadtwald, he's committee counsel; and Vice Chairman of the committee next to him, Matt Connealy from Decatur; and David Landis, Senator David Landis, is with us from Lincoln, the "Garden District." I don't know why. We're going to have to delve into that later on...the "Garden District," I mean. Senator Ray Janssen is strolling toward the on-deck chair, and he'll be making his way around. He has joined us. I wanted to just say, the green sign-in sheets, if you're not familiar with the process, are for testifiers. They are on the tables by the doors. We need to complete those. Anybody that's wishing to testify, including senators, will have to fill those out. If you're testifying on more than one bill, you'll need to submit a form for each one of those. And, please, if possible, fill those out prior to testifying. If you don't wish to testify, and you would like your name entered into the official record as being present at the hearing, raise your hand and our page Mimi, who has been sent on an errand, will be happy to distribute those. And if you want to be listed on the committee statement as a testifier, though, you must complete a green sign-in sheet and actually testify, even if you just state your name and position on the bill. And as you begin your testimony, like we just mentioned, state your name and please spell it for the record, if you would, and even if it's an easy name to pronounce and spell. And let's please try to keep testimony fairly concise. I do kind of keep a 5-minute, 10-minute, 15-minute type of interval thing. If you get to 15 minutes

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and you haven't said what you have to say, then we've got probably some issues. Other committee members will drop the hammer on me. And if you have handout material, we would be happy to distribute it. And other than that, I would say, no vocal display of support or opposition and we will be just fine. So with that, we will start off the hearings, LB 850 and Senator Beutler has joined us, and welcome to the committee.

LB 850

SENATOR BEUTLER: Thank you, Mr. Chairman. You certainly have a lot of rules. (Laughter)

SENATOR FRIEND: Well, yeah.

SENATOR BEUTLER: Mr. Chairman, members of the committee, this bill is fairly easy to understand. Even if you look at your green copy of the bill, it's one brief paragraph. In the current law, it basically says that a city of the primary class may enter into installment contracts, that is contracts that are paid in installments over time for the purchase of personal property, and then it goes on to make some other clarifying statements with regard to that power. And what this bill would do would say that in addition to personal property, you can use installment contracts to purchase real property. And this, I am given to understand, is a power, that is the power that is being asked of you today, is the power that cities of the metropolitan class, cities of the first class, and cities of the second class already have. My interest in the bill, I think, came from a concern of our fire department in that particular instance. They are interested in acquiring land for new fire stations from time to time, especially you'll understand that Lincoln is growing fairly rapidly and so it is good to get out ahead of the game a little bit. And if they can buy in installments, that helps them make purchases more in advance before the price of land goes up. So that's, in a factual sense, my principal concern, but the same thing would apply to other kinds of facilities that the city...other pieces of land that the city might be interested in in the future for police stations or even for parks or whatever. There will be three people testifying: the city of Lincoln finance officer, the city fire chief, and then also the League of

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Municipalities, in case you are interested in asking any of those particular kinds of questions. And with that, I think I'll stop right there and follow your admonition to be short, Mr. Chairman.

SENATOR FRIEND: Thank you, Senator Beutler. Are there any questions from the committee? Senator Janssen.

SENATOR JANSSEN: Senator Beutler, why was the primary classes singled out as not being able to do that? I don't understand that.

SENATOR BEUTLER: Senator, you know, the statutes with regard to municipalities, as you know, are all over the place. They've come down historically at different times and places, and to solve specific problems. And you know, sometimes we go in and we don't want to ruffle any feathers, so we change the law just for our type of city and the wisdom of that may not be seen by other cities at the time and they don't want to be a part of it, so you know, on it goes. And a few years later somebody discovers that that would be a good idea for us, too. So I think it's more a matter of historic accident than anything. I don't think there's anything about Lincoln that's particularly different.

SENATOR JANSSEN: Unless at that time, you know, the founding fathers of Lincoln decided, you know, by George, we're not going to buy anything unless we can pay for it. We're not going to put anything out on a contract where we're going to have to meet that obligation. Be interesting to know why first-class cities and metropolitan weren't.

SENATOR BEUTLER: Yeah. You know, it could well relate to a cultural feeling that was in place...

SENATOR JANSSEN: Yes, it could be.

SENATOR BEUTLER: ...at a particular point in time.

SENATOR JANSSEN: Who knows? Only the Shadow knows.
(Laughter)

SENATOR FRIEND: Senator Landis, you had some..

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SENATOR LANDIS: For you, Senator Beutler, or anybody who follows at your designation, it's not uncommon for the purchase of property to have bidding rules, RFPs. They have, purchasing of property has a relatively healthy body of public policy. If we move this authority to not only do personal property by installment contracts but real property, are we changing a standard that I don't know about in which a city buys real estate normally under this way but because we're now using this statute, there is a simplified or different variation? Would it skirt any procedural standards that otherwise exist? And while I don't expect you to know the answer to that question, if you would like to have a designee respond to that, I would be grateful, to that question.

SENATOR BEUTLER: Senator, you're correct in surmising that I don't know that level of detail. Or at least, I think I do but I would be reluctant to suggest that...

SENATOR LANDIS: Well, I do see that this says "in addition to any other powers granted." However, what I'm not sure is, if by accessing this section a city could buy real property in a way different than it normally or up till now buys real property with whatever safeguards the existing system has that might be short-circuited by this authorization. That's why I'm trying to get a comparison between what's the process here and what's the process that up till now has always been the case.

SENATOR BEUTLER: Fair question. I don't think it avoids any of the procedures...

SENATOR LANDIS: It doesn't look like it was attempted to, yes.

SENATOR BEUTLER: ...but I will let Don Herz, the finance director of the city speak to that.

SENATOR FRIEND: Thank you, Senator Landis. Any other questions from the committee for Senator Beutler? Seeing none, thanks, Senator Beutler, and we will wait for your closing.

SENATOR BEUTLER: Well, I think I'll stick around.

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SENATOR FRIEND: Okay. We'll take proponents, those in support of LB 850 first. Come on forward. Welcome.

MIKE SPADT: Thank you. Mr. Chairman, members of the committee, good afternoon. My name is Mike Spadt. I currently serve as fire chief for the city of Lincoln. And I am before you today in support of LB 850 and urge your support in moving it out of this committee on to the floor of the Legislature.

SENATOR FRIEND: Mike, could you spell your name for the record, please?

MIKE SPADT: It's Spadt, S-p-a-d-t.

SENATOR FRIEND: Thanks.

MIKE SPADT: As Lincoln Fire and Rescue, we provide a multitude of emergency services to our citizens. And when growth occurs, we must adjust to meet the needs in a consistent and reasonable configuration. Our difficulty arises due to the fact that we are behind in keeping up with growth, and our response times in some of the new areas that have been annexed by the city are suffering and not meeting our established goal. With this piece of legislation, it would provide our city leadership with a tool to procure real property and pay for it over an amount of time. This would allow us to plan and budget for future sites with an expenditure that is spread out over several years. Historically, our infrastructure has been late compared to growth and has been established through general obligation bonds. Our most recent facility was built in 1997 in the Highlands area. We currently have a need for three additional fire stations to better serve our citizens and reduce our response times in these areas of newly annexed growth. Rapid response times are the key to successful outcomes regardless of the emergency, whether it be a medical emergency or a fire. Being able to acquire land prior to development of an area will reduce the cost to the taxpayer and allow us to make a more proactive approach to planning. I'd be happy to answer any questions that you have.

SENATOR FRIEND: Thank you. Any questions from the committee? Senator Landis.

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SENATOR LANDIS: Michael, now you have to buy it outright, all in one fell swoop, make one payment?

MIKE SPADT: Senator, it's usually too late by the time...and when we have competing bond issues by the time we have identified, or I have identified as the fire chief, areas that need additional fire infrastructure or support.

SENATOR LANDIS: Well, you could go back and you could condemn but you would be paying, what, premium dollars?

MIKE SPADT: Absolutely. And that is the current situation, especially north and south Lincoln. Those are built-up areas and relatively new properties, and very little property left for me to ideally...

SENATOR LANDIS: To find to put a fire house on.

MIKE SPADT: ...to locate one that we're going to maximize and get the best bang for our buck.

SENATOR LANDIS: But why does going to an installment contract help you on timing?

MIKE SPADT: It is to identify early, prior to, and not having to go through a process of rolling everything up into...because we acquire the land and build the building and all the furnishings and equipment that we need through the bond issue.

SENATOR LANDIS: So you buy the real estate, hold it until you can then get the money to do...build a fire...

MIKE SPADT: Exactly.

SENATOR LANDIS: Okay.

MIKE SPADT: We can identify the locations based upon our comprehensive plan as to where we anticipate the city will grow and be ahead of the curve buying cornfields rather than commercial real estate.

SENATOR LANDIS: Because this isn't about timing. This is about the kind of contract you use to purchase the land.

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And as opposed to buying it all at one time, this says you can buy it on installment contract. So I'm trying to get a handle...

MIKE SPADT: Right.

SENATOR LANDIS: ...because the justification is timing but the bill is about the method of contract that you use. And the answer is, you want to be able to buy land, not use it for a while, get to the place where it's built up, then use a bond procedure and then be able to build a firehouse with the bonds.

MIKE SPADT: Absolutely.

SENATOR LANDIS: That's to kind of...okay. Any idea as to how long Lincoln wants to buy a piece of land that they don't use for the purpose that they're ultimately going to get around to using it for when it gets good...I mean is there any time line that you're thinking about here? Do you want to be five years ahead of the curve or ten years ahead of the curve?

MIKE SPADT: I would like to be at least five years ahead of the curve as far as planning in anticipation of growth, as far as the terms or length of the contract. That might be better answered by Don Herz who I believe is going to follow me.

SENATOR LANDIS: Don might be able to tell us whether any budget or revenue limitations, or any of the limits that exist on cities as to whether or not this affects this kind of purchase.

MIKE SPADT: Right.

SENATOR LANDIS: He'll do that?

MIKE SPADT: Right.

SENATOR LANDIS: Okay. Thanks, Mike.

MIKE SPADT: You bet.

SENATOR FRIEND: Thank you. Further questions? Senator

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Janssen.

SENATOR JANSSEN: Mike, what's your response time now? What's the longest response time you have, because, relating to this situation of not having something close?

MIKE SPADT: Well, our stated goal within our policies is four minutes. And the requirements spelled out in the National Fire Protection Association requirements is also four minutes for that of a medical emergency, and four minutes of the first response unit in that of a structure fire followed...to the remainder of the complement within eight. We have certain areas of the city again, both north and south, that exceed that four-minute goal. We're six, eight minutes in some locations with our response. And that's in a perfect situation where all units are in quarters in their respective districts, which is, and that doesn't happen very often anymore with the frequency.

SENATOR JANSSEN: Thank you.

MIKE SPADT: Um-hum.

SENATOR FRIEND: Thank you. Any further questions for Chief Spadt? Seeing none, thanks for testifying.

MIKE SPADT: Thank you.

SENATOR FRIEND: Next proponent please.

DON HERZ: Good afternoon, Senator Friend and members of the Urban Affairs Committee. My name is Don Herz, that's spelled H-e-r-z. I'm the finance director for the city of Lincoln. And I'm here today in support of LB 850. Towards the end of my testimony, I think maybe I can address the question, Senator Janssen, that you had, and Senator Landis. This bill will provide the city of Lincoln the opportunity to meet its governmental purposes, especially its public safety purposes, at a lower cost. The city of Lincoln has been using its existing authority, as is granted by the Legislature, to lease-purchase personal property for equipment items such as ambulances and fire engines. If this authority were extended to include real property, we anticipate using this tool to purchase land for fire, police stations, and potentially even park land at a more strategic

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time. Currently, if we have a real estate purchase that we cannot pay out of our current operating budget, we must delay the land acquisition until we are successful in passing a GO bond election for the construction of the building. At that time, the cost of the land will have escalated and we will have to pay much more for the land. The legislative authority to lease-purchase real property is currently available to every city and village in Nebraska with the exception of Lincoln. This authority is granted to metropolitan-, first-, and second-class cities, as well as villages. We would like to be able to have the same flexibility in Lincoln. And I believe, in looking at the timing of this particular section that is amended was put in place in 1988. And my best guess is that the city of Lincoln's bond council had asked for specific authority from the Legislature to do a lease-purchase of personal property, and inadvertently forgot to include the term "real property". That's my best guess. So we're here just to get that corrected. If there's any other questions, I would be glad to answer them.

SENATOR FRIEND: Thank you, Mr. Herz. Let me introduce really quickly Senator Jeanne Combs from Milligan who also joined us a while ago, and Senator Abbie Cornett from Bellevue. And I believe Senator Landis had a question.

SENATOR LANDIS: Don, any impact on procedures or processes? Any impact on budgetary limits or the like?

DON HERZ: No. Our expectation is that this type of transaction that this would allow would be handled within our current operating budget. The significant purchase, which is the building and any other related thing, would have to be done through a GO bond which gives us the additional levy authority, and also exempts it from the lid. So we would be using this on relatively minor or smaller real estate-type transactions.

SENATOR LANDIS: Okay. Thank you.

SENATOR FRIEND: Thank you. Senator Janssen.

SENATOR JANSSEN: Don, how much land, say in lots, do you need for a facility?

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DON HERZ: Well, I think Mike can answer that specifically but let's say that we needed two acres for a fire station.

SENATOR JANSSEN: Two acres?

DON HERZ: Yeah. Would that be correct?

MIKE SPADT: Yes.

DON HERZ: If we were buying that, you know, while there is not sewer service provided, we would probably be able to purchase that in the \$20,000 to \$30,000 per acre, as opposed to \$100,000 to \$150,000 when it's fully developed.

SENATOR JANSSEN: Okay. Thank you.

SENATOR FRIEND: Thank you. Any more questions? Mr. Herz, I had a quick...can you give me...and maybe it's the best way for me to get my hands around these things. Can you give me an example of the situation where the lack of this authority has either hindered Lincoln or has put you folks, just as specifically as you can in a recent situation, in a detrimental type of situation where you think things could have been handled more fluidly, I guess, if you would have had this authority.

DON HERZ: Well, I think if we'd had this authority, you know, we perhaps could have purchased some land for a fire station in north Lincoln. Currently, I don't believe we have any land available and it's going to be much more expensive to do at the time that we get a general obligation bond authority, and we would have to purchase the land at that point. So that would be one of the examples that I am aware of.

SENATOR FRIEND: So, just so I understand, so what Chief Spadt was talking about, it wasn't a hypothetical. I mean, there were potentially...and I'm not asking for specifics, I guess...but I mean there were situations where you know that something like this could have happened and it didn't.

DON HERZ: That's correct.

SENATOR FRIEND: Okay. Senator Janssen.

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SENATOR JANSSEN: Don, coming from my district, I sometimes take 14th Street into the city, and it's amazing, it's amazing what the growth is north of the Interstate on 14th Street. Now where is the closest fire station to that property?

DON HERZ: I believe, and and again, this is a question for Mike. I believe it would be the Highlands fire station.

SENATOR JANSSEN: And how far away is that?

DON HERZ: Oh, gosh, it's probably a couple of miles, I think.

SENATOR JANSSEN: But you can't get there in four minutes.

DON HERZ: Probably not. Especially once we start going north of the Interstate.

SENATOR JANSSEN: Yes. Correct.

SENATOR FRIEND: Thank you. Are there any further questions for Mr. Herz? Seeing none, thanks for your testimony. Next proponent?

LYNN REX: Senator Friend, members of the committee, my name is Lynn Rex, representing the League of Nebraska Municipalities. We do strongly support this measure. Other municipalities have used it effectively. It can be a tremendous cost savings for cities and villages, and I think it would be for the city of Lincoln as well. Let me give you an example where other cities have been able to utilize an installment purchase contract. For example, you have a person in a city that decides to move out of town and they know that the municipality needs to have a park there or it's in the comprehensive plan to have whether it be a fire station or whatever it may be. What occurs is that, typically, the family or the person will contact the city administrator or the mayor and say, you know, I'm leaving town and I know you've been looking for a place, and I'll sell you mine. And, as Senator Landis, I think, noted, that certainly is a cheaper process than going through eminent domain if you need that sort of thing. That has happened. It's also happened where someone who has passed away and the family contacts the city and says, we're not able

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financially to give you the property but we know you've been looking for property for "public project X." This is for sale. We'll give it to you for market value. Those are the kinds of things that you have to have this authority at the time that that property becomes available. And, of course, I want to underscore the fact that this goes through a public hearing process, it goes through authorization in terms of what the purchase price would be. There is a process in place for each class of city, basically, in terms of how they proceed forward. So this is not just done with a mayor or a city administrator or a councilman just going out and writing somebody a check. That's not how it's done. And certainly that's not what the process is for the city of Lincoln either. But this is extremely important and in terms of why the city of Lincoln was not included in prior legislation, it comes down to the fact that when those bills were coming through, Lincoln at that time, for whatever reason, thought maybe they had the capacity that they didn't need to have it done by installment contract or that they could just simply have the money at hand. Not all cities have the money at hand. So I think that by doing it through installment contracts, you certainly make it more affordable, you make it doable, and in the long run you save taxpayer dollars. I would be happy to respond to any questions that you might have.

SENATOR FRIEND: Thank you. Are there any questions from the committee for Ms. Rex? Seeing none, thanks for your testimony.

LYNN REX: Thank you very much.

SENATOR FRIEND: Are there any more proponents LB 850? No proponents? Are there any opponents of the legislation? Anyone neutral? With that, Senator Beutler, welcome to close.

SENATOR BEUTLER: Mr. Chairman, I waive closing unless there are additional questions or comments.

SENATOR FRIEND: Closing appears to be waived. And that will close the hearing on LB 850. With that, I see Senator Price, and we will jump right into LB 907. Welcome.

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LB 907

LB 907

MARIAN PRICE: Good afternoon, Chairman Friend and members of the Urban Affairs Committee. For the record, I am Marian Price, P-r-i-c-e. I represent the 26th Legislative District. I am here to introduce LB 907 on behalf of the city of Lincoln. This bill is familiar to some of you, as I introduced similar legislation as LB 1052 in 2004. The purpose of this bill is to address two points concerning the obligation of municipalities and rural or urban...I'm going to start over again. The reason for this bill is to address two points concerning the obligation of municipalities and rural or suburban fire protection districts in annexation procedures. The first change is that the annexed district or portion thereof shall be compensated for assets, liabilities, or other obligations of the district in proportion to the valuation of the annexed area compared to the assets, liabilities, and other obligations of the original district's valuation before annexation. Secondly, LB 907 eliminates the requirement in current law that those liabilities or other obligations be paid in full before the annexation is considered complete. The city of Lincoln has a representative of its legal department here to testify and answer the technical questions. I thank you for your attention. I will be happy to answer any questions you might have for me. And I will stay until the entire process and decide on closing.

SENATOR FRIEND: Okay. Thank you, Senator Price. Are there any questions from the committee for Senator Price? Seeing none at this time, thank you.

SENATOR PRICE: Thank you. Thank you very much.

SENATOR FRIEND: We will move to proponents first. Those in favor of LB 907?

ERNEST PEO: (Exhibit 1) Good afternoon, Mr. Chairman, members of the committee. My name is Ernest Peo. The last name is spelled P-e-o. I'm chief assistant city attorney for the city of Lincoln, Nebraska, and I'm here in support of LB 907. As was mentioned previously, this is kind of a repeat of a bill that was offered in 2004. The language before you is substantially identical to the language that was in the committee amendments when the bill was sent to

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the floor of the Legislature, however never came to a vote during that term, and we're seeking to have it go back to the Legislature again this year. Basically there is a conflict in the two statutes regarding annexation of property from a fire protection district. There is a general statute that deals with sanitary improvement districts, road improvement districts, and fire protection districts that was on the books prior to a specific statute being added dealing with fire protection districts itself. And this conflict between the language of the two statutes kind of puts a cloud over the city of Lincoln as to what isn't happening when we do annex property. Under our ordinances for primary class cities, some annexations of property are deemed automatic when a party final plats their land and it's approved, it's deemed automatically to come into the city limits, if it's contiguous. The statute that we're concerned about says that annexation of land within a rural fire protection district is not complete until debts and liabilities are satisfactorily paid for. That's in conflict with the prior statute which just basically says annexation is complete when your land is annexed, you have a duty and responsibility to pay your prorata share of those obligations. But that's something that can happen after the fact. In fact, it almost has to because that statute requires that you go to district court and have that court approve a settlement agreement establishing and approving that sharing of responsibilities. The city has encountered a slowness on dealing with fire protection districts and working out those type of agreements. Frequently, it's due to the fact that the obligation that would be assumed by the city is so nominal that it costs more to hire an attorney and go to court than to receive your payments. And so I think people just step back and say let's just not even worry about it. In the last year or so, we have worked out an arrangement with the Southwest Rural Fire Protection District to look at all annexations that incurred during a single year, and just have one agreement. And so we're not really intending to have annexation be held in abeyance while we wait for that to happen, and I think that's more an economic incentive for everybody to work together. We reduce the fire protection districts' costs, they only have to hire an attorney once a year to look at all of the annexations that occurred. It might be 1, it might be 0, but sometimes maybe it's up to 3, 4, or even 5 that occur in sometimes very nominal small area. They don't justify an

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independent evaluation each time an annexation occurs. So I think we're trying to resolve that. We're also trying to consolidate and make the language between the two statutes the same as to what is the responsibility of the city to pay. The fire protection district statute 35-514 just says you will pay your share of the obligations. It doesn't give the city any credit for any assets that the district might have in satisfying that debt. The other statute does provide for that type of properly shared arrangements. Back in 2004, the city did analysis of all the annexations that we had occurred from 1996 through that date, and calculated them according to the formula that I have in my written testimony, and determined that almost in every instance there would be more assets than liabilities that the fire district had after that annexation. And we don't try to get a proportionate share of assets when there's no debt. We only want a share of the assets to apply against a debt that we might have to assume. So as I said, in most instances there's been really no impact on fire protection districts by annexation. It's costly and expensive for them to go to court to have something approved, and we think by consolidating the language of the two statutes so that they're more identical, the type of procedure that we're utilizing would be fair and beneficial to everyone. I believe there will be a speaker coming forward later that's going to propose an amendment to require notification to the fire protection districts when an annexation is going to incur. We don't have any objection to that type of notification. I do believe that the amount of time that they're specifying, ten days, works for second-class cities but not necessarily for the city of Lincoln. Our state statute requires only five days' notice, and our charter, eight days' notice. And I think to maybe more simplify it would be that you have to give the statutory notice for your class of city might be better than having a date certain would simplify our city clerks preparing notices that you don't have to be trying to have a catch list of specialized notices that require a different time line. With that, unless there's any questions, I would terminate my testimony.

SENATOR FRIEND: Thank you, Mr. Peo. Senator Landis.

SENATOR LANDIS: A city annexes, takes over, pays a proportional share of assets and liabilities and

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maintenance, starts to run a fire and rescue service to the annexed areas.

ERNEST PEO: Right.

SENATOR LANDIS: What is the source of payment for those portions of liabilities not otherwise covered by the city but which will be extinguished when the service moves to the city? I mean, the tax base, I assume, will move to the city or whatever. How will the fire district meet its obligations when it's no longer providing fire service, the annexation is complete, and the city has paid 80 percent of the liabilities?

ERNEST PEO: Well, hopefully the remaining period that's needed for the fire protection district to service is so reduced in area that their cost will be substantially less. They will already have their fire protection equipment on hand, so they probably have more than they actually even need. As their service area is reduced, their needs are reduced proportionately. So they should have sufficient equipment to manage themselves. Typically these are volunteer fire departments, so they don't really have salaries and expenses in that nature. So their major concern is their bonded indebtedness. That's what's paid for by their tax assessments, and that's what we would be paying a fair share of through our formula of calculation, that if the value of a fire district is \$10 million and we annex property having \$1 million worth of value, we would owe basically 10 percent of their bonded indebtedness. We'd have to give them a lump sum payment to pay down, so that the tax base will cover the remaining 90 percent. So that's kind of a simplified version of how we look at it.

SENATOR FRIEND: Thank you. Senator Connealy.

SENATOR CONNEALY: But under the current scenario, they owe \$10 million, you pay a million of it but you don't get to go after the \$2 million that they have in the bank.

ERNEST PEO: Yeah. That's the issue. Sometimes they have several hundred thousand or money in the bank that could be applied to that debt or would be...if we annexed everything, we would assume all assets and all liabilities. So if we only annexed 10 percent, we assume that we're entitled to

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only assume 10 percent of their obligations and, if they have assets, to apply 10 percent of that assets against the debt we would have to pay to them. I think that's just a fair analysis, and that was an analysis that was approved by the Nebraska Supreme Court, that formula, back in 1987 when they were interpreting the statute in existence at that time.

SENATOR FRIEND: Senator Schimek had a question.

SENATOR SCHIMEK: Yes, thank you, Mr. Chairman. Mine is a process question. I don't recall what happened to this bill in 2004. Did it come out of committee unanimously?

ERNEST PEO: It came out of committee.

SENATOR SCHIMEK: Is it a possible consent calendar bill? I'm just wondering what we're going to do with this bill if we do advance it from committee. And you may not know the answer to that, and that's okay.

ERNEST PEO: Yeah, I don't recall. I think it came out unanimously. It wasn't put on...I don't remember if it was put on consent but it did come out. It just didn't get to the floor for a vote on the floor.

SENATOR SCHIMEK: So...okay. Because unless it is a consent calendar bill, I'm not sure we would actually get to it. That was my concern. Thank you.

SENATOR FRIEND: You bet. I believe it died on General File with the committee amendment in a 60-day session.

SENATOR SCHIMEK: But did it come out...

SENATOR FRIEND: Yes.

SENATOR SCHIMEK: ...unanimously? Thank you.

SENATOR FRIEND: Well, I don't know if it was unanimous. Sorry. Senator Janssen had a question I believe.

SENATOR JANSSEN: Some of the areas that say would be annexed, would they be just the municipal fire district or would there be some rural duties there, too? Would there be

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a rural fire protection district along with it?

ERNEST PEO: That's the only thing that we have surrounding Lincoln is the rural fire protection districts, and that's what we're annexing. And usually they're valued under agricultural classification for value so, as we expand, we intrude into their boundaries and are taking off small portions piecemeal as development occurs to the city. And they wouldn't have the capacity to handle that future type of urban density that would be put on this land.

SENATOR FRIEND: As Senator Janssen is contemplating his next move...

SENATOR JANSSEN: No, no, I'm done.

SENATOR FRIEND: ...are there any other questions at the moment for Mr. Peo? Seeing none, thanks for your testimony. Are there any other proponents at this time? Proponents? Are there any...okay, a proponent. Welcome.

JERRY STILMOCK: (Exhibit 2) Thank you. I thought there were others and I was going to try to go last. My name is Jerry Stilmock, S-t-i-l-m-o-c-k, lobbyist, testifying on behalf of the Nebraska State Volunteer Firefighters Association in a soft support. When LB 1052 was before the committee back in 2004, we had opposed because of the narrow language that was used in that particular bill. I had urged the committee to go back and revisit that committee amendment, the proposed committee amendment to LB 1052, AM3078. In there it spreads out the type of language that we were speaking of in terms of the different types of obligations that might arise, the different liabilities that might arise, and not just net bonded indebtedness as it was couched in LB 1052. So we would much prefer to ask the committee counsel to go back to that committee amendment that was talked about. One of the things that I think we're concerned in rural areas is notification. And Mr. Peo spoke of that because I spoke with him about it early on in the process to send out, the municipality be charged with the responsibility to send out notice to the fire protection district that, in fact, annexation is taking place. And the reason is twofold: number 1, to know what's going on; but number 2, because once that annexation starts there's that issue of when, if the parties, the municipalities and the

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fire district, are unable to work out an agreement as to the compensation, the payback for assumption and payment of liabilities, when does the cause of action accrue for that fire district to go into court. And if that annexation occurs and the fire district doesn't have notice up front, what happened back in the Millard case that Mr. Peo referred to, back in 1987, the Millard fire district waited years, years after the annexation. And so it created an issue of when was it proper for the Millard fire district to bring a lawsuit against Omaha because they were unable to work out their differences? Part of the problem in that Millard case was the statute of limitations, for a portion of the decision had already lapsed and Millard was out of time in one part of it. So I propose some language to suggest early notification. Within the statute as it's written now, there are some inconsistencies. The statute that we're dealing with in LB 907, 35-514, uses the words that the area shall be automatically annexed from the boundaries of the district. Two sentences later in that same statute it says that except, that before the annexation is complete, the municipality shall pay. And I think the bottom line is, everybody in the room is interested in who's going to provide the fire protection, who's going to provide the rescue services for those people in the community. Is it going to come from the municipality or is it going to continue to come from the rural district? And I think that's a key item for the committee to address and to consider to make sure that we do have a stopgap so that the inconsistencies in the statute that I've referenced, as well as in Section 31-766...we have another portion in 31-766 that states that the boundaries shall become effective on the date the decree is entered. Now "the decree is entered" we're talking about, that's the district court decree. And that district court decree comes into play under one of two examples: either we have a settlement agreement, we walk into court and the district court approves the settlement agreement and the decree is entered, or we could be years down the road because there has been no agreement, the issue is litigated between the municipality and the rural district and we have this language, as odd as it may seem, that says the change of boundaries shall become effective when the decree is entered. So there are some inconsistencies. And I think the important part would be to try to rectify notice to the fire district that something is happening in the form of annexation. And then, also implore the committee to go

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back and look at that language that the committee worked out two years ago because one of the items that is missing in today's bill, LB 907, that was present in LB 1052 is the language that says that once that annexation is complete, then the city shall begin providing fire and rescue services. And I'd ask the page if the page could please come forward so that the senators could obtain a copy of the proposed amendment which would provide for certified mailing to the rural, to the fire district by the municipality. Thank you.

SENATOR FRIEND: Thank you. Are there any questions for Mr. Stilmock? Senator Landis, you had one?

SENATOR LANDIS: I think we've been provided with a couple of versions here, and I see some variation but I'm not sure, Jerry, that I see the one that you're talking about. I see the relevant portion of LB 907 here and the relevant portion of AM3078. Because while you're saying, I want you to go back and get to the language, hmmm, let me see what it is. Here's the AM3078: "The municipality shall be responsible to pay the district for its share of the division of the assets, liabilities, and maintenance, or other obligations of the district in proportion to the valuation of the portion of the district annexed to the valuation of the portion of the district remaining following annexation and shall assume responsibility for providing fire and rescue service to the annexed areas." That is what's in LB 204 last year, the one that you like. This one says "the municipality shall be responsible to pay the district for a portion of the assets, liabilities, or other obligations of the district in proportion to the valuation of the portion of the district annexed to the valuation of the district before annexation." End of story. And then, I think it does remain, I guess, moot but aren't they then in control of the fire and rescue operations for that area, Jerry?

JERRY STILMOCK: I think by the committee amendment last year and using that phrase "and shall assume," our responsibility for providing fire and rescue, it takes care of the inconsistency which appears in 31-766 that says, the boundaries shall be effectively changed upon the entry of the decree. That's one item that you've tagged on about what's lacking in LB 907 that was in the committee amendment. The other part is simply the word "maintenance."

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In the phrase that strings the words "assets, liabilities, or other obligations," the committee amendment two years ago pulled exactly the same language and mirrored what was in 31-766 to remain consistent, I believe, Senator.

SENATOR LANDIS: Jerry, I'm listening to you. I don't exactly get it. Is it timing? Is it that you think the city's going to hold on and not pay what they should and yet run an operation ...where's the downside that you see? I don't sense it in the language, so help me out. Give me the downside that you're afraid of.

JERRY STILMOCK: Well, one of the items is what Mr. Peo recognizes, that oftentimes it's simply litigation unaffordable because of the amount involved and because of the technicalities involved and the amount of research and investigation that would be necessary. A city would not have to make payment because there's no hammer by the fire district to go forward. And that's one of the concerns that Mr. Peo brought up.

SENATOR LANDIS: Who's providing the service...is somebody going without getting paid, Jerry? What's the story? The city is going to be provided fire and rescue at that point but not having paid their share of the previous format of providing services. Is that the downside danger?

JERRY STILMOCK: Yes.

SENATOR LANDIS: So I buy 80 percent of the fire truck; I buy 80 percent of the hose; I pay 80 percent of the debts...or I say I will. I annex. I start providing the services but I haven't finished up the paperwork with the fire district and...

JERRY STILMOCK: Yes, sir.

SENATOR LANDIS: ...written a check?

JERRY STILMOCK: Yes, sir.

SENATOR LANDIS: This is about getting a check at the time the transfer occurs.

JERRY STILMOCK: Yes.

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SENATOR LANDIS: If you got a check when the transfer occurs, you would be happy.

JERRY STILMOCK: Er. Yes, happier. Yes. (Laughter)

SENATOR LANDIS: In other words, that's the problem. I don't mean happy.

JERRY STOLMOCK: Right, right.

SENATOR LANDIS: But I'm saying your objection is, this allows them to do the service, pay a portion of their obligations, you know, under this formula, but we don't see the need to have the check cleared before they start doing a fire service and we would like to have the money in hand. We'd like to have a statutory duty that we get paid.

JERRY STILMOCK: Yes.

SENATOR LANDIS: And what's missing from this language is that sense of, we're going to get paid before the fire service transitions.

JERRY STILMOCK: That would help because we have limbo happening out there, and it's not getting done the way you described it, and that would help.

SENATOR LANDIS: Thank you.

SENATOR FRIEND: Thank you, Senator Landis. Are there any other questions from the committee? Jerry, that was good. I mean that cleared some things up for me. Doesn't change. I mean, you're testifying in a proponent fashion, and really, the bottom line is, the "er" that you talked about before is so much better. I mean, I guess the point is, this thing is out on the floor. Senator Schimek brought up a point earlier, unless it's on the fast track who knows where it could go. This gets out to the floor and gets attached to something, what do we see some strange things out there, you know, saying, well, where's the rest of this language? I mean you're on board, it's just that it would look a lot better if that stricken language was in there, I guess.

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JERRY STILMOCK: Yes.

SENATOR FRIEND: But I don't know where I'm going with... I just don't want to see something, I guess, and I don't think anybody would, a month from now where things just turn sour just because that language is not there. And I guess I'm not looking for your assurance as opposed to just maybe saying that the proponent testimony is the proponent testimony. It's as simple as that.

JERRY STILMOCK: And the reason why we chose to come in as proponents is because of the nature of what happened two years ago...

SENATOR FRIEND: Yeah.

JERRY STILMOCK: ...and quite a bit had changed and we just prefer to see that committee amendment language be reinserted.

SENATOR FRIEND: Yeah. All right. Okay. Were there any other questions from the committee? I'm sorry. Seeing none, thank you, Mr. Stilmock.

JERRY STILMOCK: Thank you.

SENATOR FRIEND: Anyone else in a proponent capacity on LB 907? Is there any opposition to LB 907? Any opposition? Anyone in a neutral capacity? Neutral?

JACK CHELOHA: Senator Friend, members of the Urban Affairs Committee, my name is Jack Cheloha. That's spelled C-h-e-l-o-h-a. I'm a registered lobbyist for the city of Omaha. Sorry, I'll fill out a sheet here afterward. I didn't know I was testifying up until two minutes ago. But basically I'm here just because of some concerns regarding the language. And I think what we'd like to work on maybe with the committee is our concerns have to do with if there is a wholesale annexation of the community or whether it's because of annexation or merge, or they utilize this new entity called a city/county merger and create a municipal county, there might be some concerns along those lines. So that's why I'm here today. Not to point to any specific community, but say, for example, we decided to annex a whole community and they might have a professional firefighter

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organization but they also have some volunteers affiliated with it. There could be some concerns relative to this language that's being proposed in this bill, and we would like to be able to at least work through that. So I'll try and answer any questions you might have.

SENATOR FRIEND: Thank you, Mr. Cheloha. Questions from the committee? Senator Schimek, I believe.

JACK CHELOHA: Thank you, Mr. Chairman. Jack, I'm assuming that if a city/county merger goes forward, there would have to be some legislation that would address a whole bunch of different questions.

JACK CHELOHA: Right. I think that would...you mean from the State Legislature itself...

SENATOR SCHIMEK: Right.

JACK CHELOHA: ...or things worked out? Okay. Right. I think that's probably true but in the meantime, I suppose as they look at them, they want to know in advance what the costs and obligations would be as it moved forward, so...

SENATOR SCHIMEK: Right.

JACK CHELOHA: Right.

SENATOR SCHIMEK: Okay, thank you.

SENATOR FRIEND: Thank you. Were there any more questions for Mr. Cheloha from the committee? Seeing none, thanks for your testimony.

JACK CHELOHA: Thank you.

SENATOR FRIEND: Senator Price...was there any more neutral testimony? Senator Price to close.

MARIAN PRICE: Thank you. Chairman Friend and members of the committee, in referring to the committee statement of 2004, voting in the affirmative were five of the members: Senator Combs, Senator Connealy, Senator Friend, Senator Hartnett, and Senator Janssen. No one voted in opposition. Present and not voting was Senator Schimek. And absent was

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Senator Landis. And the amendment which has been referred to...

SENATOR LANDIS: I was busy, okay? (Laughter) I'm sure I had something to do.

SENATOR FRIEND: Senators, that's called a pregnant pause. I knew he'd speak up.

SENATOR PRICE: Listen, this is just for the record, Senator Landis.

SENATOR LANDIS: Thank you. Thank you, Senator Price.

SENATOR CONNEALY: We appreciate that.

SENATOR PRICE: And, listen, if I hadn't been asked the question, I wouldn't have to give the answer.

SENATOR LANDIS: I did like your bill up until now, Marian, but I'm not so sure it's on my list of favorites now. (Laughter)

SENATOR PRICE: Listen. Talk to Senator Schimek. She's the one who raised the question. Listen, the amendment from last year, from 2004, has been incorporated into this current bill. And I am agreeable to and accepting of the amendment that's been proposed about the notice. Have you received a copy of the amendment? All right. And I'm agreeable to that. And the city of Lincoln would be agreeable to this amendment also. And, as you have questions as you begin to sort this out, don't hesitate to talk to me and I will speak to other sources and I will get the answer to your questions. And this is my closing, and are there any questions?

SENATOR FRIEND: Thank you. Any questions for Senator Price? Seeing none, thank you. And with that, I believe that closes the hearing on LB 907 and the hearings for the day.